

STATE OF MICHIGAN  
COURT OF APPEALS

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PAMELA KRZYSIK,

Plaintiff-Appellant,

v

SUSAN LEE CARY,

Defendant-Appellee,

and

GRANGE INSURANCE COMPANY OF  
MICHIGAN,

Defendant.

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UNPUBLISHED

March 17, 2011

No. 295273

Barry Circuit Court

LC No. 08-000646-NI

Before: K.F. KELLY, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

In this automobile negligence case, plaintiff Pamela Krzysik appeals as of right a circuit court order granting summary disposition to defendant Susan Lee Cary. We reverse and remand for further proceedings. We have decided this appeal without oral argument in conformity with MCR 7.214(E).

Krzysik and Cary had an automobile accident on January 28, 2008. Krzysik maintains that the accident caused injuries to her neck and both wrists. Following discovery, Cary moved for summary disposition pursuant to MCR 2.116(C)(10) on the ground that Krzysik had failed show a serious impairment of body function as required by MCL 500.3135(1) and (7). The circuit court agreed and granted Cary's motion.

We review de novo the circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id.*

The no-fault act subjects a person "to tort liability for noneconomic loss caused by . . . her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered

death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A “serious impairment of body function” constitutes “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7).

In granting Cary’s motion for summary disposition, the circuit court applied the defunct standard set forth in *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004), rev’d in *McCormick v Carrier*, 487 Mich 180; \_\_\_ NW2d \_\_\_ (2010), finding that Krzysik had not established that her impairment affected her general ability to lead her normal life. The circuit court held:

And having read all . . . of the *Kreiner* cases from the Court of Appeals, it just seems to me that this is the type of injury that really has not affected the Plaintiff’s general ability to lead her life. She can do most of her normal activities or all of her normal activities. Maybe she has some lingering problems, but they don’t seem to be the type that the cases indicate should be a serious impairment as a matter of law.

In *Kreiner*, 471 Mich at 131, the Michigan Supreme Court articulated a multistep process to guide a trial court’s consideration whether a plaintiff has sustained a threshold injury. *Id.* The trial court must first determine whether a factual dispute exists concerning the nature and extent of the plaintiff’s injuries. If there is no dispute, or if a dispute exists that is immaterial to whether a plaintiff has endured a serious impairment of a body function, the court must determine whether “an ‘important body function’ of the plaintiff has been impaired.” *Id.* at 131-132. To merit further inquiry, a court has to find both that “an important body function has in fact been impaired,” and that the impairment qualifies as objectively manifested. *Id.* at 132. A plaintiff who has sustained an objectively manifested impairment of an important body function must also demonstrate that the impairment affects his or her general ability to lead a normal life. *Id.* “In determining whether the course of the plaintiff’s normal life has been affected, a court should engage in a multifaceted inquiry, comparing the plaintiff’s life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff’s overall life.” *Id.* at 132-133. This analysis must be followed by an objective determination “whether any difference between the plaintiff’s pre-and post-accident lifestyle has actually affected the plaintiff’s ‘general ability’ to conduct the course of his life.” *Id.* at 133. The *Kreiner* Court summarized that “[a]lthough some aspects of a plaintiff’s entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff’s normal life has not been affected, then the plaintiff’s ‘general ability’ to lead his normal life has not been affected.” *Id.* at 131.

On July 31, 2010, the Michigan Supreme Court decided *McCormick*, 487 Mich at 184, which overruled the interpretation of MCL 500.3135 in *Kreiner*, 471 Mich 109. *McCormick* announced a new standard for evaluating whether the injuries sustained by a third-party no-fault claimant meet the statutory threshold of serious impairment. *McCormick* instructs that “the threshold question whether the person has suffered a serious impairment of body function should be determined by the court as a matter of law as long as there is no factual dispute regarding ‘the nature and extent of the person’s injuries’ that is material to determining whether the threshold standards are met.” 487 Mich at 193, quoting MCL 500.3135(2)(a)(i). A three-pronged analysis

dictates whether a plaintiff has established a serious impairment of body function. *Id.* at 215. A plaintiff must show

(1) an objectively manifested impairment (observable or perceivable from actual symptoms or conditions) (2) of an important body function (a body function of value, significance, or consequence to the injured person) that (3) affects the person's general ability to lead his or her normal life (influences some of the plaintiff's capacity to live in his or her normal manner of living). [*Id.*]

The Supreme Court elaborated in *McCormick*, 487 Mich at 202, that when evaluating whether a plaintiff's injuries have affected the person's general ability to lead his or her normal life, "courts should consider not only whether the impairment has led the person to completely cease a pre-incident activity or lifestyle element, but also whether, although a person is able to lead his or her pre-incident normal life, the person's general ability to do so was nonetheless affected." The plaintiff need only produce evidence

that some of the person's *ability* to live in his or her normal manner of living has been affected, not that some of the person's normal manner of living has itself been affected. Thus, while the extent to which a person's general ability to live his or her normal life is affected by an impairment is undoubtedly related to what the person's normal manner of living is, there is no quantitative minimum as to the percentage of a person's normal manner of living that must be affected. [*Id.* (emphasis in original).]

"The serious impairment analysis is inherently fact- and circumstance-specific and must be conducted on a case-by-case basis." *Id.* at 215.

Our review of the record reveals no factual dispute concerning "the nature and extent of the person's injuries" that is material to determining whether the threshold standards are met." *McCormick*, 487 Mich at 193, quoting MCL 500.3135(2)(a)(i). The medical records and testimony in evidence objectively document that Krzysik endured a neck injury that gave rise to persistent headaches for at least most of the year after the January 2008 vehicle collision, notwithstanding some medical disagreement with respect to the precise nature of the neck injury. The medical evidence additionally objectively establishes that Krzysik suffered from carpal-tunnel syndrome in both her wrists, which caused Krzysik pain and numbness from January 2008 until a doctor surgically repaired both wrists, one in October 2008 and the other in November 2008. Although Cary suggests on appeal her disbelief that Krzysik "can establish that her carpal tunnel condition was caused by the accident," at least one doctor opined that the January 2008 accident "probably" caused Krzysik's carpal-tunnel syndrome, the evidence specifically substantiates that Krzysik did not have any carpal-tunnel symptoms before the January 2008 accident, and Cary points to no evidence contradicting the carpal-tunnel diagnosis or its connection to the January 2008 accident. The parties appear to otherwise agree about the nature and extent of Krzysik's injuries. As a matter of law, Krzysik's cervical injury and carpal-tunnel syndrome impair important body functions. *Netter v Bowman*, 272 Mich App 289, 306; 725 NW2d 353 (2006), rev'd in part on other grounds in *McCormick*, 487 Mich at 197 n 11; *Kroft v Kines*, 154 Mich App 448, 452; 397 NW2d 822 (1986) (observing that an injury to a plaintiff's arm "impaired an important body function"), vacated on other grounds 428 Mich 879 (1987).

According to medical records and testimony, Krzysik experienced moderate to severe neck pain and persistent headaches for a year after the January 2008 collision, and she had difficulty sleeping, remaining in an upright position, and engaging in physical activity throughout this period. On doctor's orders, Krzysik wore a cervical collar through May 2008. Doctors placed Krzysik, who was searching for employment at the time of the January 2008 accident, on work restrictions through September 2008; shortly thereafter, she underwent surgery on both her wrists, which necessitated a four- to six-week recovery period. As Cary notes in her brief on appeal, Krzysik testified "in her deposition given on January 6, 2009 that she was unable to play with her kids, lift, shoot baskets, or even walk through a grocery store without getting a headache." Krzysik remained able to prepare meals for the children, drive them a short distance to school, and help them with their homework, but on most days otherwise laid in bed "pretty much for the rest of the day." Contrary to Cary's contention, the photographs showing Krzysik putting up a basketball net and riding a lawn mower, which Cary attached to her summary disposition brief, simply do not establish as a matter of law that Krzysik has resumed "her normal daily activities."

In summary, the record establishes that the January 2008 accident caused Krzysik's neck injury and carpal-tunnel syndrome, and that these conditions chronically gave Krzysik pain and precluded her from seeking employment for nearly all of 2008. The record also substantiates that even at the time of Krzysik's deposition a year later, she still could not pursue all the activities she previously enjoyed with her children and felt pain when she tried to perform usual household chores. We conclude that, viewed in the light most favorable to Krzysik, the record amply demonstrates "that some of [Krzysik]'s *ability* to live in . . . her normal manner of living has been affected," *McCormick*, 487 Mich at 202 (emphasis in original), or, stated differently, that the accident has "influence[d] some of . . . [Krzysik]'s capacity to live in . . . her normal manner of living." *Id.* at 215. Consequently, the circuit court improperly granted Cary's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly  
/s/ Elizabeth L. Gleicher  
/s/ Cynthia Diane Stephens